

REMARKS / DISCUSSION OF ISSUES

Claims 1-6 and 8-11 are pending in the application. Claim 1 is the independent claim.

Objection to the Specification

Applicants thank the Examiner for providing information about recommended section headings. However, Applicants respectfully decline to add the headings. Section headings are not statutorily required for filing a non-provisional patent application under 35 USC § 111(a), but per 37 CFR § 1.51(d) are only guidelines that are suggested for applicant's use. (See "Miscellaneous Changes in Patent Practice, Response to comments 17 and 18" (Official Gazette, August 13, 1996) [Docket No: 950620162-6014-02] RIN 0651-AA75 ("Section 1.77 is permissive rather than mandatory. ... [T]he Office will not require any application to comply with the format set forth in 1.77")). (See also MPEP § 608.01(a)).

Request for Substantive Examination

Applicants gratefully acknowledge the withdrawal of all rejections of the Office Action of March 19, 2009. Notably, even though the rejection of claim 4 was withdrawn, there is no indication that this claim has been allowed; and there is no substantive rejection in the present Office Action of claim 4 under any germane section of 35 U.S.C. If no rejection is made, indication of allowance is respectfully requested. If a rejection is made of claim 4 in the next Office Action, Applicants respectfully submit that any such rejection cannot be properly made final at least because they have been deprived of the opportunity to present evidence of patentability and otherwise reply completely at the earliest opportunity as provided by MPEP § 706.

Rejections under 35 U.S.C. § 102

Claims 1-3, 5-9 and 11 were rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by *August* (U.S. Patent 6,503,188). For at least the reasons set forth below, Applicants respectfully submit that all pending claims are patentable over the applied art.

At the outset Applicants rely at least on the following standards with regard to proper rejections under 35 U.S.C. § 102. Notably, a proper rejection of a claim under 35 U.S.C. § 102 requires that a single prior art reference disclose each element of the claim.¹ Anticipation requires that each and every element of the claimed invention be disclosed in a single prior art reference.² Alternatively, anticipation requires that each and every element of the claimed invention be embodied in a single prior art device or practice.³ For anticipation, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention.⁴

Claim 1 recites:

A system for providing a personalized experience to a person in a medical environment, comprising:

- *means for selecting by the person preferred data from a collection of data, **the means for selecting comprising at least one identifier element comprising predetermined data**, and the means for selecting being connected with*
- *means for controlling means for displaying the selected data in the medical environment, the means for controlling comprising **means for reading the data comprised in the identifier element**.*

¹ See, e.g., *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983).

² See, e.g., *In re Paulsen*, 30 F.3d 1475, 31 USPQ2d 1671 (Fed. Cir. 1994); *In re Spada*, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990).

³ See, e.g., *Minnesota Min. & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992).

⁴ See, e.g., *Scripps Clinic & Res. Found. v. Genentech, Inc.*, 927 F.2d 1565, 18 USPQ2d 1001 (Fed. Cir. 1991).

In the filed application, the identifier element 11 comprises predetermined data A. In an embodiment control means 2 comprises means for reading data comprised in the identifier element 11.

In rejecting now-cancelled claim 7, the Office Action directs Applicants to column 12, lines 12-17 and 52-61 of *August*. Applicants have reviewed this portion of the applied art and have uncovered no disclosure of at least the identifier element. Notably, lines 12-17 describe a visual display member 404, which is viewable for a bed 402. Lines 52-61 describe how a biophilic scene 705 is displayed on visual display 704; how audio is provided from a sound emitting device 718; and how scents are provided for a scent emitting device 724. However, while this portion of the *August* describes visual, audio, and olfactory sensations, there is no disclosure, there is no disclosure of an identifier element comprising data; and certainly no disclosure of means for reading the data comprised in the identifier element.

For at least the reasons set forth above, Applicants respectfully submit that the applied art fails to disclose at least one feature of claim 1. As such a *prima facie* case of anticipation cannot be established based on *August*. Therefore, claim 1 is patentable over the applied art. Furthermore, claims 2-6 and 8-11, which depend from claim 1 immediately or ultimately, are patentable for at least the same reasons and in view of their additionally recited subject matter.

Rejections under 35 U.S.C. § 103

The rejection of claim 10 has been considered. While Applicants in no way concede the propriety of the rejection, Applicants note that claim 10 depends from claim 1. Therefore, claim 10 is patentable for at least the same reasons and in view of its additionally recited subject matter.

Conclusion

In view the foregoing, applicant(s) respectfully request(s) that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application in condition for allowance.

If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted on behalf of:
Phillips Electronics North America Corp.

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